

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BUNGIE, INC.,

Plaintiff,

v.

AIMJUNKIES.COM, et al.

Defendants.

No. 2:21-cv-811

**PLAINTIFF BUNGIE, INC.'S  
MOTION TO AMEND JURY  
TRIAL DATE AND RELATED  
DEADLINES**

NO ORAL ARGUMENT  
REQUESTED

NOTED: September 15, 2023

PLAINTIFF'S MOTION TO AMEND CASE  
SCHEDULE

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## I. INTRODUCTION

Bungie seeks to extend the current trial date and related case deadlines by 120 days. Good cause exists for this extension. All issues relating to Defendants' counterclaims could be resolved if Bungie's motion for spoliation sanctions and/or the deferred portion of Bungie's motion for summary judgment are granted in whole or in part, and would significantly narrow the issues remaining for the parties to address at trial. The requested extension will also create resource-saving efficiencies for all parties alike – Bungie, the Defendants, the Court – and will in any event not prejudice Defendants.

## II. FACTUAL BACKGROUND

Bungie filed its complaint on June 15, 2021, and its amended complaint on May 19, 2022, in both pleadings asserting claims for trademark and copyright infringement. Dkt. Nos. 1, 34. Defendants filed their answer to Bungie's Amended Complaint, and May and Phoenix Digital asserted counterclaims, on September 16, 2022. Dkt. No. 63. After granting in part Bungie's motion to dismiss certain of Defendants' counterclaims, the Court also granted Bungie's motion to amend the case schedule to move the trial date to permit discovery concerning the remaining counterclaims. Dkt. Nos. 84, 86. The parties completed that fact discovery on May 12, 2023. A narrow category of expert discovery remains open, however, until September 28, 2023, concerning Defendants' substitute expert witness. *See* Dkt. No. 180. Bungie must file any motions related to this new expert by October 12, 2023; briefing on such motions would be completed on October 27, 2023. *Id.*

Also, Bungie has claim dispositive motions currently pending. Bungie filed a motion for summary judgment on its trademark and copyright infringement claims and on all of Defendants' counterclaims, and the Court has ruled only on Bungie's affirmative claims, not Defendants' counterclaims. Dkt. Nos. 156, 193. Moreover, by its motion for discovery sanctions, Bungie seeks dismissal of Phoenix Digital's breach of contract counterclaim in its entirety and each of May's

counterclaims insofar as such claims rely on Bungie's alleged access to files on certain drives May destroyed. Dkt. Nos. 100, 146, 146-1. As part of the same sanctions motion, Bungie seeks adverse inferences relevant to both Bungie's copyright and trademark infringement claims and May's and Phoenix Digital's respective counterclaims. *Id.*

The parties participated in a mediation on August 24, 2023. The mediation was unsuccessful, and the parties have not otherwise resolved the case. Dkt. No. 194.

Currently, the case is set for a jury trial to begin on December 4, 2023, with the parties scheduled to begin exchanging the pretrial statement and deposition transcript excerpts for use at trial on October 10, 2023. Dkt. No. 86; LCR 16(h).

Bungie seeks to amend the case schedule as proposed below or as modified by the Court. This is Bungie's second request to modify the case schedule.

	<b>Current Deadline</b>	<b>Proposed Deadline</b>
<b>JURY TRIAL DATE</b>	<b>December 4, 2023</b>	<b>April 1, 2024</b>
Length of Trial	3 to 4 days	3 to 4 days
Limited discovery regarding Brad LaPorte's expert testimony must be completed by	September 28, 2023	September 28, 2023
Plaintiff must file any motion related to Brad LaPorte (e.g., Daubert motion) by and note the motion not later than the third Friday thereafter (see LCR 7(d))	October 12, 2023	October 12, 2023
All motions in limine should be filed by and noted on the motion calendar no later than the Friday before the Pretrial Conference (See LCR 7(d)(4))	October 23, 2023	February 19, 2024
Pretrial Order due by	November 3, 2023	March 4, 2024

1	Trial Briefs to be submitted by	November 13, 2023	March 11, 2024
2	Proposed Voir Dire/Jury Instructions	November 13, 2023	March 11, 2024
3	due by		
4	Pretrial Conference set for <b>10:00 AM</b>	November 27, 2023	March 25, 2024
5	on		

### III. ARGUMENT

“Pursuant to Rule 16(b) of the Federal Rules of Civil Procedure, a case schedule “may be modified only for good cause and with the judge’s consent.”” *Nat’l Prod. Inc. v. Innovative Intelligent Prod., LLC*, No. 2:20-CV-00428-RAJ, 2020 WL 4698767, at \*2 (W.D. Wash. Aug. 13, 2020). “The standard for ‘good cause’ focuses primarily on the diligence of the party seeking the amendment.” *Id.* (granting extension of case schedule where party had acted diligently in proceedings, opposing party had not established prejudice, and pleadings had recently been amended) (internal quotes omitted). Here, there is good cause for Bungie’s extension request for at least two independent reasons.

First, despite the parties’ diligence in prosecuting and defending against the other’s claims, on the current schedule they will need to expend significant resources preparing for a trial on all issues in the case, when it is possible that issues related to Defendants’ counterclaims will be narrowed—or completely eliminated—by resolution of Bungie’s pending motions. In this way, an extension promotes efficiencies for both the parties. Indeed, there may be no need for a trial on Defendants’ counterclaims if Bungie’s outstanding motions are resolved in its favor. And even if only a portion of Bungie’s remaining motions are resolved in its favor, the issues left to be tried could likely be materially narrowed. The requested extension therefore allows the parties and the Court to efficiently allocate resources to focus on issues that actually remain in dispute.

Second, Bungie’s requested extension should also be granted because it will benefit all parties equally and not prejudice Defendants, who declined Bungie’s request to consent to the

1 extension. Bungie's requested extension creates the same efficiencies for Defendants as it does  
 2 the Court and the Bungie—effectively allowing for the narrowing of issues to be tried and  
 3 thereby reducing the resources that all parties would expend in preparing for trial.

#### 4 IV. CONCLUSION

5 For the reasons provided, Bungie seeks a 120-day extension of the trial date and related  
 6 deadlines.

7  
 8 Dated: September 7, 2023

By: /s/William C. Rava

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